
CHAPTER 1. BASIC ELIGIBILITY REQUIREMENTS AND
ADMINISTRATIVE PROCESSING PROCEDURES

- 1-1. NATURE AND PURPOSE OF SECTION 231. Mortgage insurance under Section 231 of the National Housing Act provides a program for relieving the shortage of housing for elderly and/or handicapped persons. A project shall comprise eight or more new or rehabilitated units designed for use and occupancy by elderly persons and handicapped persons. In processing an application under this Section, outstanding instructions for the basic Section 207 program shall be followed except as modified herein.
- a. Sponsorship - The program will involve the following types of mortgagors:
- (1) Public;
 - (2) Public Non-Profit Organizations;
 - (3) Private Non-Profit Organizations; and
 - (4) Private Profit-Motivated Organizations.
- b. There is no substitute for a strong and capable sponsorship primarily concerned with the continuing operation of a project for the elderly and/or handicapped rather than just its initiation. Sponsors of profit-motivated projects should be interested in long-term investment, with profits from construction as a secondary consideration. Both profit-motivated and non-profit sponsorships must be financially capable and willing to provide funds as may be necessary in the completion and operation of a project.
- c. Section 231 projects sponsored by private nonprofit mortgagors are eligible for participation in the rent supplement program. Up to five percent of the total contract authority authorized in appropriation acts may be used in Section 231 and Section 202 senior citizens and/or handicapped projects. Current regulations permit up to 100 percent of the units in a Section 231 project to be occupied by families in the rent supplement program, but administratively, an increase over the limits established will be permitted only on a case-by-case basis. Participating projects shall meet the maximum gross monthly rentals established by HUD for the program.
- d. The Handbooks listed in References (1) and (2) of the Foreword contain further detailed information on the rent supplement program.

1-2. DEFINITION AND EXPLANATION OF TERMS.

- a. Elderly Person. A person 62 or older.
- b. Handicapped Person. A person who has a physical impairment which:
 - (a) Is expected to be of a long-continued and indefinite duration;
 - (b) Substantially impedes his/her ability to live independently; and
 - (c) Is of such a nature that his/her ability to live independently could be improved by more suitable housing conditions.
- c. Occupancy Preference. Sponsoring nonprofit organizations such as labor unions, professional groups, and fraternal or civic organizations, may give preference to their members, provided membership in the organization is open without regard to race, color, creed, or national origin. However, sponsors cannot restrict occupancy to their members.

1-3. REAL ESTATE TAX ABATEMENT OR EXEMPTION. If the sponsor claims that the project will receive abatement or exemption from real estate taxes, the Regional Counsel must concur in the validity of the claim before it may be accepted in determining the feasibility of the proposed project. The Field Office Manager/Supervisor, therefore, must receive such concurrence before issuing a conditional or firm commitment. In the Manager's/Supervisor's memorandum to the Regional Counsel, transmitting the sponsor's claim and supporting document, he/she to include any information he/she has regarding similar projects in the jurisdiction where abatement or exemption was requested and whether it was allowed. Copies of the transmittal memorandum are to be sent to the Director, Technical Support Division in Washington, and the Director, Office of Regional Housing. Outlined below are the following procedures to be followed:

- a. Sponsor Submission. The sponsor must submit a full statement of the facts, including a copy of the application for the abatement or exemption which has been, or will be, presented to the local authorities. The statement of facts and application must correctly describe the project and its proposed operation on which the claim is based. Also to be submitted is an

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- (1-3) opinion letter from the prospective mortgagor's attorney making reference to the statement of facts and application, advising the basis and extent of the claimed exemption or abatement, and stating that, except for a future change in the statute or material change in the facts, the project will be entitled to the exemption or abatement claimed. The letter must cite the State statute involved and must attach any other material supporting the claim, i.e., local administrative rulings or court decisions, opinions of local private or public counsel or the State Attorney General.
- b. Exemptions Based on Special Legislation. In some states, special legislation has been passed granting tax exemption to particular types of housing, e.g., housing located in urban renewal areas or housing for low or moderate income groups or for other social needs. Generally, tax exemption pursuant to such legislation may be safely assumed. If, after review, the Regional Counsel determines that the proposed project meets the special criteria of the legislation, the Field Office Director will be advised that the project may be processed on a tax exempt basis without guaranty.
- c. Exemptions Based on General Charitable and Eleemosynary Statutes. Exemption under a general statute exempting projects for charitable or eleemosynary purposes may not be assumed. Processing requires different treatment than under paragraph (1-3) b. above. Even though an exemption may be obtained initially, it is not safe to assume that it will continue throughout the life of the mortgage. Therefore, it is necessary that adequate safeguards be adopted. After review of the proposal and the appropriate statute, the determination of the Regional Counsel will result in either:
- (1) Exemption assured: If there is assurance that the tax exemption will be initially granted, the Field Office Director will be advised that the project may be processed on a tax exempt basis. The sponsor however will be required to execute a guaranty agreement on FHA Form 1708 assuring the payment of taxes in the event the project loses its exemption in the future.
- (a) The amount of the guarantee to be inserted in Item 1. of the form will be determined by the Field Office Director and will be sufficient to reduce the mortgage to an amount which would permit the mortgage to be carried by the mortgagor on a tax paying basis.

- (b) Under the agreement, the sponsor will either pay taxes as they become due or make a lump sum prepayment of the mortgage in the guaranteed amount and have the mortgage recast.
- (c) In addition to the guarantee requirement, the Director must determine: that the credit reputation of the guarantor is acceptable; that analysis of a current financial and operating statement indicates clearly its financial ability to perform under the guarantee; and that the sponsor has presented legal assurance satisfactory to the Regional Attorney that it has the legal capacity to execute the guarantee agreement.

- (2) Exemption not assured: If it is determined that there is no assurance of tax exemption, the Director will be so advised and the project will be processed solely on a tax paying basis. Sponsors will not be permitted to obtain tax exempt processing on the basis of offering to execute the guarantee agreement.

1-4. DETERMINING ELIGIBILITY OF NONPROFIT SPONSOR. The eligibility of a sponsor will be determined by review of the information submitted with FHA Form 3433, Request for Preliminary Determination of Eligibility as Nonprofit Sponsor or Mortgagor. This form is to be submitted in triplicate and will be completed and reviewed in accordance with the instruction sheet. In addition to other required information, if the sponsoring group is part of a regional or national organization which maintains an office specializing in housing, or services for the elderly, the Field Office Director shall ask whether that office has been notified of the proposed project, and if so, their reply. The Field Office Director will notify the sponsor of his determination of eligibility.

1-5. FOUNDER'S FEES AND PROHIBITION. "Founders' Fees," "admission fees," or similar types of payments are prohibited in connection with a Section 231 proposal.

1-6. CONTROLS AND SPECIAL REQUIREMENTS FOR NONPROFIT SPONSORS.

- a. Assistant Secretary-FHA Commissioner's Control over Mortgagor: The mortgagor must be a "Private Mortgagor Nonprofit" or a "Public Mortgagor" as defined in Section 231.2 of the FHA Regulations. If a corporate mortgagor, the Model Form of charter, FHA Form 1732, should be used for corporations to be formed.

- (1-6) Existing corporations must amend their charters, as required to permit them to own and operate this type of project. All nonprofit mortgagors, corporate or other, must execute a Regulatory Agreement, FHA Form 2466e.
- b. Occupancy Charges: Occupancy (rental) charges are controlled by the Commissioner, as in other programs. Charges will be based on a budget presented by the mortgagor and reviewed by the field office for accuracy. Income must be budgeted in a sufficient amount to cover debt service and replacements reserve requirements, estimated maintenance and operating expenses, taxes, and a reasonable allowance for vacancies.
- (1) The mortgagor's Regulatory Agreement provides that occupancy charges (rental schedule) for the project are subject to HUD-FHA approval. Consequently, the mortgagor must obtain approval of these charges before the time of first occupancy. The Field Office Director, at a time sufficiently in advance of first occupancy to permit evaluation and possible necessary adjustments, will require the mortgagor to submit a proposed operating budget and the occupancy charges based thereon, in triplicate, on FHA Form 2458-A, Schedule of Charges and Project Information - Housing for the Elderly (Nonprofit). In presenting the proposed budget, the mortgagor must indicate that it has been passed upon and approved by the Board of Directors, by appropriate resolution.
- (2) The budget will be evaluated and, if adequate, the Field Office Director will approve a schedule of charges based on it. In the absence of a budget, or in a situation where the one submitted is inadequate, a provisional approval of the proposed charges may be given pending the submission of a satisfactory budget.
- (3) The original FHA Form 2458-A will be returned to the mortgagor with the letter of approval and a copy of each forwarded to the Director, Office of Loan Management. In the approval letter, the Field Office Director shall advise the mortgagor that FHA Form 2458-A will be required to be submitted annually at least 30 days before the end of each fiscal year in order that HUD-FHA may pass upon the adequacy of the coming year's budget whether or not an increase in occupancy charges is contemplated.

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- (1-6) (4) If, during the course of construction, there has been an increase in replacement cost over the estimated replacement cost shown in the applicable FHA Form 2264; or if after preparation of the form, it has been determined that an increase in the estimate of operating cost or taxes is justified, such increase or increases may be considered and reflected in the rental schedule only if they are substantiated by relevant, pertinent, and convincing evidence satisfactory to the Field Office Director, concurred in by the Director of HPMC or Chief Underwriter and on file in the Washington Docket.
- (5) In approving initial rental schedules, Field Office Directors may approve rates lower than the permissible maximums. The approval letter shall, nevertheless, include a statement of the maximums allowable and advise that increases up to the maximums may be made without prior approval of HUD-FHA, provided revised rental schedules are submitted in duplicate to the Field Office.
- c. Donated Labor: Where there is a possibility of the use of donated labor in construction of the project, the sponsor must be informed of the requirements and procedures for "Use and Control of Donated Labor."
- d. Management: A copy of the proposed management contract together with a resume of the background and experience of the management agent shall be submitted for evaluation and approval by HUD-FHA.
- e. Type of Construction Contract
- (1) A cost-plus construction contract will be required in all cases. An incentive clause may be included.
- (2) The only deviation from the use of a cost-plus contract is provided for in the FHA Regulations. A lump-sum contract may be used if it is established to the Assistant Secretary-FHA Commissioner's satisfaction that a cost-plus form of contract is not required to protect his interests and the interests of the mortgagor. If the use of a lump-sum contract is requested by the mortgagor, the Field Office Director will determine if it meets the requirements of the Regulations.

- (1-6) f. Allowance for Making Project Operational (AMPO): In lieu of a working capital deposit, there will be enclosed in the estimated replacement cost, an allowance equal to 2% of the mortgage amount. For a complete discussion on AMPO see Reference 4 of the Foreword.
- g. Special Financing Provisions. It is permissible for nonprofit mortgagors to borrow funds required for project purposes subject to the conditions set forth below:
- (1) Loans from the Contractor or Other Parties Involved with Project: It is permissible for nonprofit mortgagors to borrow funds from the contractor or other parties furnishing supplies or services only for the costs of items to be covered by the insured mortgage. Any such loan must be paid in full at the time mortgage proceeds are advanced for the item for which the loan was made. In the case of insurance upon completion, any such loan must be paid in full at the time the note is endorsed for insurance.
 - (2) Loans from the Sponsor or from Parties in no way connected with Project: It is permissible for nonprofit mortgagors to borrow funds required for any project purpose from the sponsors. Also, mortgagors may borrow from persons or firms in no way connected with the project provided that the indebtedness will in no way create a situation where the person or firm can exercise any direction or control over the mortgagor. If funds are to be borrowed for project purposes not to be included in the mortgage, the total amount of the debt must be secured by a promissory note executed by the mortgagor on FHA Form 1710. The form provides for the prior written approval of the Assistant Secretary-FHA Commissioner of payment of the loan. However, for Section 231 nonprofit mortgagors, the notes may be endorsed as follows:

"Approval to make repayment of this loan from Residual Receipts is hereby granted this _____ day of _____, 19__.

Assistant Secretary-FHA Commissioner
By Authorized Agent"

- (3) Donations to the Mortgagor by Parties Other than the Sponsor: A proposal which contemplates gifts or donations to the mortgagor from the general contractor, a subcontractor, the architect, or other parties furnishing supplies or services will not be acceptable. If such gifts or donations come to the attention of the Field Office Director subsequent to the date of initial endorsement (start of construction in insurance upon completion cases) the amount of such gifts or donations must be deducted by the mortgagor in cost certification.

- h. Cost Certification Requirements: In all cases, the general contractor will be required to file FHA Form 2330-A, supported by an accountant's certification as described in Reference (3) of the Foreword, unless prior approval has been given to the use of a lump-sum contract.

- i. Special Provisions Applicable to Rehabilitation Projects
 - The provisions in the sub-paragraphs below are applicable to rehabilitation projects under this program:
 - (1) Cases involving Identity of Interest Between Seller and Sponsor: Same as instructions for Section 207.
 - (2) Escrow for Delayed Replacement Items: Same as instructions for Section 207, and
 - (3) Disposition of Balance in Existing Reserve for Replacement Account: All of the provisions contained in the instructions under Section 207 are applicable except that any balance remaining in the reserve account at the time of final endorsement will be transferred to the cash account and will be available only for project purposes.

- 1-7. DETERMINING MARKET. Because of the many factors involved in the determination of market for a housing project for the elderly, it is desirable for all new proposals to have a current HUD Housing market analysis. Experience has clearly shown that letters of interest from people residing in other localities are an unreliable indication of the market for a project for the elderly, even in areas traditionally considered attractive to retired people. The marketability of a proposed project should, therefore, be judged on the basis of demand expected to be generated primarily within the market area where the project is to be located.

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- 1-8. MULTI-PURPOSE ROOM. A multi-purpose room may be used on occasion for religious services. The room must be available for use by all religious groups comprising the tenancy. Religious articles or equipment may not be permanently installed and should be removed promptly at the conclusion of services.
- 1-9. USE OF HOUSING CONSULTANTS BY NONPROFIT SPONSORS. Some nonprofit organizations sincerely interested in providing multifamily housing under HUD-FHA programs lack the staff and other facilities to develop a project. HUD-FHA recognizes the need for these organizations to use the services of housing consultants to expedite development, improve the quality of proposals and to lower costs. For a more complete discussion on the use of consultants, see Reference (4) of the Foreword.
- 1-10. PROFIT MOTIVATED SPONSORS.
- a. Requirements and Restrictions of Mortgagor - the requirements and restrictions applicable to a Section 207 mortgagor will apply to a Section 231, Profit Motivated Mortgagor.
 - b. Occupancy - In selecting tenants, the mortgagor shall be bound by the provisions of Regulatory Agreement, FHA Form 2466e, to give absolute priority of occupancy of 100% of the total number of dwelling units to elderly and handicapped persons. The provisions regarding occupancy requirements are set out in Article 5 of the model form of the Regulatory Agreement, and are to be specifically brought to the attention of the sponsor.
 - c. Room Composition, Design and Special Amenities - Particular attention is to be given to room composition to assure it is consistent with the needs of the elderly market. All units must be designed for use and occupancy by elderly or handicapped persons. In projects of sufficient units to support them, auxiliary facilities such as a lounge, central dining facilities, infirmary facilities or multipurpose rooms are to be encouraged to the extent consistent with the needs of the occupants. The auxiliary facilities must be considered in processing in accordance with outstanding Section 207 underwriting and administrative instructions.

- d. Determining Market - See Paragraph 1-7. Also note that no project should be approved unless it merits at least minimum related facilities. Otherwise the project would be an ordinary multifamily housing project and should not be processed under Section 231.
- 1-11. STATE OR LOCAL APPROVAL - If approval of the project is required by State or local law, the sponsor must furnish evidence that the appropriate authorities have approved the proposal.
- 1-12. REQUIRED COMMITMENT CONDITIONS FOR NONPROFIT SPONSORS - Each commitment shall carry the additional conditions listed below:
- a. Submission of FHA Form 3434 and 3435: Prior to initial endorsement in the case of insurance of advances (beginning of construction in the case of insurance upon completion), the Sponsor and Mortgagor shall certify to the Assistant Secretary - FHA Commissioner on FHA Form 3434 as to their relationships with persons, parties or firms furnishing land and services. Such persons, parties or firms furnishing land and services shall certify to the Assistant Secretary-FHA Commissioner on FHA Form 3435 as to their relationship with the Sponsor and Mortgagor. Subsequent to such certifications, if there is a change in the certified relationship, the Sponsor, Mortgagor and the other parties must furnish the Assistant Secretary-FHA Commissioner additional certifications with respect to each change. All relationships are subject to approval of the Assistant Secretary-FHA Commissioner and he reserves the right to refuse endorsement of the note for insurance and to cancel the commitment if such relationships do not meet with his approval.
 - b. Management Contract: With the sponsor's request for conditional commitment, a copy of the proposed management contract together with a resume of the background and experience of the management agent shall be submitted for evaluation and approval by HUD-FHA.
 - c. Sponsor's Certification: At the time of initial endorsement, an executed Sponsor's Certification, FHA Form 3437, must be furnished.

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- d. Donated Labor. Any contract or subcontract executed for the construction of a project insured under Section 231 of the National Housing Act, as amended, shall contain a provision that the amount of such contract will be subject to appropriate

reduction prior to final endorsement for mortgage insurance by the value of donated labor. In each case, amendments must be made prior to final endorsement to FHA Forms 2482, Contractor's Certification of Labor Standards and Prevailing Wage Requirements, and the Construction Contract, FHA Form 2442 or 2442A, to reflect the reduction of any contract by the value of donated labor.

1-13. NONPROFIT PROJECTS INVOLVING INSURANCE UPON COMPLETION. Processing will conform to basic Section 207 instructions modified as follows:

a. Cost Certifications:

- (1) Donated Labor: See Paragraph 1-12 d.
- (2) Net Income Prior to Beginning of Amortization: Nonprofit housing for the elderly mortgagors are not subject to advance amortization requirements.
- (3) Ground Rent: Ground rents during the construction period may be paid out of mortgage proceeds and included in cost certification.

b. Allowance for Making Project Operational (AMPO): For insurance upon completion cases, the mortgagor must include in his certification of actual costs an itemized statement reflecting all expenditures for the items covered by AMPO. Mortgage proceeds equal to the amount of the expenditures approved will be released to the mortgagor. The remaining AMPO balance shall be escrowed in the reserve for replacements account. See Paragraph 1-6. f.